IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:	)	In Proceedings
	)	Under Chapter 7
PYRAMID ENERGY, LTD.,	)	
	)	BK No. 85-40186
Debtor.	)	
	)	Adv. No. 91-4093
PYRAMID ENERGY, LTD.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
DUQUOIN NATIONAL BANK,	)	
	)	
Defendant.	)	

OPINION

Debtor Pyramid Energy, Ltd. filed a complaint on July 16, 1991, initiating an adversary proceeding against DuQuoin National Bank (the bank) seeking compensatory damages based on the bank's alleged misconduct and misapplication of funds subsequent to the filing of the debtor's bankruptcy petition. The bank's motion to dismiss the complaint is now before the court.

The bank made several loans allegedly aggregating over $200,000 to the debtor, a corporation engaged in the coal slurry recovery and land reclamation business. These loans were secured by liens on debtor's accounts receivable and certain business machinery and equipment. The debtor filed a voluntary petition for Chapter 11 bankruptcy relief on May 21, 1985, listing the bank as a secured creditor.

On July 10, 1985, the bank filed a motion for relief from the automatic stay. The bank alleged it had a claim against the debtor in the amount of $240,109.87 as of the date of the filing of the

bankruptcy petition, and that it had a perfected security interest in certain machinery and equipment. The bank claimed the debtor had failed to adequately protect the bank's interest in the property in that the debtor's insurance on the property had lapsed. On July 24, 1985, the court ordered the debtor to sell the unshipped coal slurry in its possession and to use the proceeds of the sale to purchase insurance for its machinery and equipment. The court ordered that the remaining proceeds were to be held pending further order of the court.

The bank filed another motion for relief from the automatic stay on January 14, 1986, alleging it had a secured claim against the debtor in the amount of $176,588.15, and that it had a perfected security interest in certain machinery and equipment owned by the debtor. The bank claimed, for various reasons, that it did not have adequate protection for its interest in the property, and requested the stay be modified to permit it to replevy the property. The court entered an order on April 11, 1986, pursuant to the parties' agreement, lifting the stay with respect to the property described in the bank's motion. The order required the bank to give the debtor a fourteen-day notice concerning any potential sale of the property to enable the debtor to obtain a better offer for the property.

Pursuant to an order entered on February 13, 1989, the debtor thereafter conducted a Rule 2004 examination to investigate whether the subsequent sale of the coal slurry and machinery and equipment was properly conducted. Fed. R. Bankr. P. 2004. The examination also included an investigation of the status of the debtor's $90,000 in certificates of deposit held by the bank and pledged to the Illinois

Department of Mines and Minerals as a bond for land reclamation.

The debtor's disclosure statement filed on April 19, 1989, indicated that the only assets of the business remaining were two possible causes of action, including one against the bank, and two certificates of deposit held by the bank. On April 26, 1989, the case was converted to a proceeding under Chapter 7. The trustee subsequently listed in her interim report as property of the estate a cause of action against the bank. The trustee, however, did not pursue the cause of action, and on April 15, 1991, the court granted the trustee's request to abandon the cause of action against the bank pursuant to 11 U.S.C. § 554 (1991).

The debtor then filed a three-count complaint against the bank. Count I relates to the court's order entered on July 24, 1985 (the 1985 order). The debtor alleges the coal slurry was sold for $12,000, but that only $2,000 of the proceeds were used to obtain insurance, and the remaining $10,000 is in the possession of, and is still unaccounted for by the bank. The debtor seeks judgment against the bank in the amount of $10,000 plus costs.

Under Count II, the debtor alleges the bank sold the machinery and equipment in violation of the order entered on April 11, 1986 (the 1986 order). The debtor alleges the bank failed to advise the debtor of the prospective sale of the property. The debtor contends the bank received a total of $59,812.40 for the property, but that the bank had procured an appraisal of the property on June 9, 1987 which revealed the property was worth at least $145,850.00. The debtor seeks judgment against the bank in the amount of $145,850.00 plus costs.

Count III of the debtor's complaint concerns the two certificates of deposit. The debtor alleges that in September and November of 1984 it deposited two certificates of deposit with the bank, one in the principal amount of $50,000 and the other in the amount of $40,000, respectively. According to the debtor, the certificates of deposit were provided as security for mine reclamation charges as required by the Illinois Department of Mines and Minerals. The debtor further contends the bank released such certificates of deposit to a third party, John Hoskins, in September of 1989, and the bank has failed to account for the proceeds of the certificates and the interest thereon. Hoskins allegedly was the owner of the land upon which the debtor's mine reclamation project was located. The debtor seeks judgment against the bank in the amount of $90,000 in principal, plus accumulated interest of $58,438.82, for a total of $148,438.82 plus costs.

The bank has filed a motion to dismiss the debtor's complaint. on a motion to dismiss, the court "must assume the truth of all well-pleaded factual allegations and make all possible inferences in favor of the plaintiff." Prince v. Rescorp Realty, 940 F.2d 1104, 1106 (7th Cir. 1991). The court should not dismiss a complaint "'unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" I.d. (quoting Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 102, 2 L.Ed.2d 80 (1957)). The bank contends the debtor 1) lacks standing to bring the cause of action, 2) has failed to state a claim upon which relief can be granted, and 3) has failed to join an indispensable

party.

Although the bank, in its memorandum in support of its motion, intertwines its arguments on the issues of standing and failure to state a claim, it appears to have three basic arguments on these two issues. First, the bank alleges the cause of action was not necessarily abandoned to the debtor and therefore the debtor cannot bring the action. The bank acknowledges that usually when the trustee abandons property of the estate, the property reverts to the debtor. The bank, however, contends that if abandonment occurs before the estate is closed, the property may go to anyone with a possessory interest in the property. The bank claims the trustee and the court did not indicate to whom the property was abandoned, and it is therefore unclear whether the abandoned cause of action inured to the benefit of the debtor.

Property of the estate includes "[a]ny interest in property that the estate acquires after the commencement of the case." 11 U.S.C. § 541(a)(7) (1991). An interest in a cause of action can be property of the estate which the trustee then has a right to pursue on behalf of the estate. In Re James, 120 B.R. 802, 807-808 (E.D. Pa. 1990); In Re Doemling, 127 B.R. 954, 955 (W.D. Pa. 1991). The cause of action which arose here alleges the bank wrongfully disposed of property which, at the time of disposition, was property of the estate. Therefore, the wrongful actions of the bank allegedly injured the bankruptcy estate, see Doemling, 127 B.R. at 956, and the cause of action against the bank which arose as a result of these actions and which accrued after the debtor filed its bankruptcy petition, was property of the estate which

the trustee had a right to pursue. The trustee, however, did not pursue the action, but instead properly abandoned the property pursuant to § 554 of the Bankruptcy Code, which allows a trustee to abandon any property of the estate that is burdensome or of inconsequential value and benefit to the estate. 11 U.S.C. § 554 (1991).

Neither the order to abandon in this case nor § 554 indicate to whom the abandoned property reverts. Nevertheless, when a trustee abandons estate property, including a cause of action, such property reverts to any party with a possessory interest in the property, usually the debtor. See Unisys Corp. v. Dataware Products, Inc., 848 F. 2d 311, 314 (lst Cir. 1988); James, 120 B.R. at 808; In Re R-B-Co., Inc. of Bossier, 59 B.R. 43, 45 (Bankr. W.D. La. 1986) ; In Re Cruseturner, 8 B.R. 581, 591-92 (Bankr. D. Utah 1981); Warren Refrigerator Co. v. Fosti Midstream Fueling and Service, Inc., 462 So.2d 1343, 1347 (La. Ct. App. 1985).

The debtor here has a possessory interest in the abandoned cause of action. The cause of action sets forth various violations and wrongful actions the bank allegedly undertook in disposing of property in which the debtor had an interest. Moreover, according to at least two counts of the complaint, the bank violated court orders lifting the automatic stay in a bankruptcy case to which the debtor was a party. It is true the estate also had an interest in this cause of action because the property the bank wrongfully disposed of was, at the time, property of the estate. The estate, through the trustee, was also a party to the bankruptcy proceeding in which the bank allegedly violated the court orders. The trustee, however, abandoned the cause of action.

Although other individuals or entities may have a possessory interest in, or standing to pursue, the cause of action, the debtor is not thereby foreclosed from bringing the action as long as the debtor has a possessory interest in the action and otherwise has standing to do so. The bank does not indicate who else may have such an interest, but simply states that it is not clear to whom the trustee abandoned the cause of action. The court can find no other individual or entity, besides the debtor, who may have an interest in, or standing to pursue this cause of action. Moreover, the bank cites no case law to support its theory. Under these circumstances, the court finds that the cause of action was abandoned to the debtor. See Warren Refrigerator, 462 So.2d at 1347.

Second, the bank contends it is also unclear what property was in fact abandoned. The bank points out that the application, notice, and order abandoning the property simply stated that "a cause of action against DuQuoin National Bank" was abandoned, and made no reference to the nature of the action contemplated or whether the trustee intended to abandon the underlying assets which the debtor is seeking to recover, namely, the surplus proceeds from the sale of the coal slurry, the surplus proceeds which could have been realized upon the proper disposition of the machinery and equipment, and the proceeds from the two certificates of deposit. According to the bank, if the trustee did not abandon these under-lying assets, then the debtor has no standing to recover these assets because the assets are still property of the estate and an action for recovery of estate property must be brought by the trustee.

When the trustee abandons a cause of action, the trustee abandons any right the estate may have had to a successful recovery if the suit were brought. In this case, the debtor seeks damages for the wrongful disposition of property in which it had an interest. The debtor does not seek recovery of the actual property. The coal slurry, machinery and equipment, and certificates of deposit are no longer property of the estate or of the debtor, but are rather the property of third persons. Like-wise, the proceeds from the disposition of the coal slurry and the machinery and equipment are no longer the property of the estate or of the debtor, but are instead allegedly in the hands of the bank. The debtor is now simply seeking damages based on the bank's improper disposition of all three categories of property. Although the bank had a secured claim against the debtor and received relief from the stay to pursue its collateral, the debtor's complaint alleges the bank violated conditional provisions in the orders which granted the bank relief from the stay. The bank cites In Re Peninsula Roofing & Sheet Metal, Inc., 9 B.R. 257 (Bankr. W.D. Mich. 1981) for support, a case which is distinguishable and inapplicable. For these reasons, the court finds it is irrelevant, for purposes of the debtor's standing and the sufficiency of the debtor's complaint, whether the assets underlying the cause of action were abandoned.

The bank also asserts that the order of abandonment does not specifically state what cause of action against the bank was abandoned, and therefore it is unclear whether this cause of action was the one abandoned. The bank, however, does not indicate that any other potential cause of action against it exists which may have been

confused with the present action. Moreover, the Rule 2004 examination the debtor conducted prior to abandonment concerned the underlying allegations of the complaint the debtor filed in this case. Consequently, the court finds that the present cause of action was the one abandoned by the trustee.

Third, the bank alleges that the debtor, in order to have standing, must show it has suffered an actual injury as a result of the bank's actions, and the debtor has failed to make such a showing. The bank contends that the debtor can only recover damages to the extent the bank recovered proceeds in excess of its security interest in the coal slurry and machinery and equipment, and only if the debtor can establish that its rights to the certificates of deposit were superior to those of Hoskins, the man to whom the bank allegedly released the certificates. The bank claims the debtor has failed to plead a superior right to these assets and therefore has not alleged any injury. The bank asserts the debtor's complaint shows the bank had a superior right to all of these proceeds because the complaint acknowledges the bank had a secured claim and was granted relief from the stay.

In order to have standing, a party must show he or she personally suffered some actual or threatened injury, the injury can be traced to the defendant's allegedly wrongful conduct, and the injury will likely be redressed by a decision in the plaintiff's favor. Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464, 472, 102 S.Ct. 752, 758, 70 L.Ed.2d 700 (1982). The debtor has alleged sufficient facts to show that it was

injured by the bank's allegedly wrongful conduct. The 1985 Order stated that the proceeds of the sale of the coal slurry were to be used to purchase insurance, and that the "remaining proceeds [were] to be held pending further Order of this Court." No further order appears in the record indicating final distribution of the excess proceeds. Assuming the facts alleged in the debtor's complaint are true, namely, that excess proceeds were derived from the sale of the coal slurry and were kept by the bank, the bank violated the 1985 Order. The bank was not entitled to the excess proceeds absent further order of the court. Such action injured the debtor by depriving the debtor and its estate of the excess $10,000.

Likewise, the 1986 order stated that the bank had to give the debtor a fourteen-day notice before the sale of the machinery and equipment to allow the debtor an opportunity to obtain a better offer for the property. Assuming the facts alleged in the debtor's complaint are true, namely, that the bank failed to give such notice and sold the property for much less than it was worth, the bank violated the 1986 Order. Such a violation harmed the debtor because, if the property could have been sold for a higher price, the bank's claim against the debtor and its estate would have been reduced even further. The bank cites no case law to support its position that the debtor has to show a superior right to the excess proceeds of the sale of the property over and above the bank's secured claim when the bank allegedly violated two court orders in its disposition of the property.

The debtor also has standing to bring Count III. The debtor states in the complaint that the bank "had deposited with it two

certificates of deposit constituting funds of" the debtor, thereby alleging ownership rights in the certificates of deposit. The complaint also indicates, however, that the certificates of deposit were provided as security for mine reclamation charges as required by the Illinois Department of Mines and Minerals, and that the bank released the certificates to Hoskins who was the owner of the land upon which the debtor's mine reclamation project was located. Thus, at the time the certificates of deposit were released, Hoskins may have had some rights in the certificates as well. The bank contends the debtor has not shown that its rights are superior to those of Hoskins and therefore Count III should be dismissed. Assuming the debtor has an ownership interest in the certificates of deposit as it alleges, the bank's release of the certificates to Hoskins harmed the debtor's interest by depriving the debtor of those funds. The debtor has therefore alleged an injury. The resolution of who was entitled to, or who had ownership in the certificates of deposit cannot be resolved on a motion to dismiss. For all of these reasons, the court finds that the debtor has standing to pursue the complaint and has stated a claim, under all three counts, upon which relief may be granted.

The bank's final contention is that the complaint should be dismissed because the debtor failed to join an indispensable party, Hoskins, to the suit pursuant to Rule 19 of the Federal Rules of Civil Procedure.[1] Under Rule 19(a), the court must first determine "whether

[1]Bankruptcy Rule 7019 states that Rule 19 of the Federal Rules of Civil Procedure applies in adversary proceedings. Fed. R. Bankr. P. 7019. Rule 19 provides:

failure to join the omitted party prevents the court from rendering complete relief, or alternatively whether the absent party is so situated that the failure to join him or her will impair that party's interest or expose the named parties to the risk of multiple and potentially inconsistent adjudications." In Re Schraiber, 107 B.R. 899, 902 (Bankr. N.D. Ill. 1989). When any of these situations exists, the absent party should be joined, if the absent party is subject to service of process and the party's joinder will not deprive the court of subject matter jurisdiction. Fed. R. Civ. P. 19(a). If all of the requirements of Rule 19(a) are thus fulfilled, then a determination of

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> (a) Persons to be Joined if Feasible. A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party. . . .
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> (b) Determination by Court Whenever Joinder Not Feasible. If a person as described in subdivision (a)(l)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. . . .

Fed. R. Civ. P. 19.

indispensability under Rule 19(b) is not required. Schraiber, 107 B.R. at 902. Where joinder of the absent party is feasible pursuant to Rule 19(a), a plaintiff should be given a reasonable opportunity to join the absent party to the action. 7 Charles Alan Wright et al., Federal Practice and Procedure § 1604, at 64 (2nd ed. 1986).

If, on the other hand, the absent party is not subject to service of process or the party's joinder will deprive the court of subject matter jurisdiction, the court must then determine pursuant to Rule 19(b) "whether in equity and good conscience the action should proceed" without the absent party. Fed. R. Civ. P. 19(b). When the court determines that the proceeding should not continue under the circumstances without the absent party, then the action must be dismissed, "the absent [party] being thus regarded as indispensable." Fed. R. Civ. P. 19(b). "The party raising the defense of failure to join an indispensable party has the burden to show that the person who is not joined is needed for a just adjudication." Federal Deposit Insurance Corp. v. Beall, 677 F.Supp. 279, 283 (M.D. Pa. 1987).

The bank argues that if the certificates of deposit have been released to Hoskins and Hoskins is not made a party to this suit, complete relief cannot be accorded among the present parties, Hoskins rights to the certificates and the proceeds thereof would be adversely affected, and the bank would risk incurring double liability. The bank contends the court should therefore dismiss the suit pending the debtor's joinder of Hoskins as a defendant.

Contrary to the bank's contention, complete relief can be accorded the present parties to the action and Hoskins rights to the

certificates of deposit will not be adversely affected if he is not joined. The debtor does not seek the return of the certificates of deposit, but rather seeks damages for the bank's alleged wrongful release of the certificates. Therefore, any interest Hoskins has in the certificates would not be affected by this suit. Ferme Rimouski, Inc. v. Limousin West, Inc., 620 F.Supp. 552, 555 (D. Colo. 1985). Moreover, complete relief can be accorded the parties presently in the suit, because the debtor is seeking damages in the amount of the funds it lost by reason of the release of the certificates. Thus, the debtor can obtain relief for the bank's wrongful conduct.

Likewise, the bank does not run a "substantial risk" of incurring double or inconsistent obligations. The bank is free to file a separate action against Hoskins, assuming there are grounds to do so. Rule 19 does not require the joinder of joint tortfeasors, of principal and agent, or of persons against whom a defendant may have a claim for contribution. Nottingham v. General American Communications Corp., 811 F.2d 873, 880-81 (5th Cir. 1987). Presumably, the bank is concerned that it may be obligated to pay the debtor while at the same time be unable to obtain the proceeds of the certificates back from Hoskins in a subsequent lawsuit, and therefore incur a double obligation for the same claim. The bank, however, would not be incurring a double obligation for the same claim. The debtor's claim is for wrongful transfer of the certificates, whereas any claim Hoskins has in the certificates would be based on whatever ownership rights he now has in the certificates or the proceeds thereof. See Ferme Rimouski, 620 F.Supp. at 555-56. The bank does not explain why it may be subject to

double or inconsistent liability if Hoskins is not joined, and the court will not further speculate as to the reasons or circumstances behind the bank's allegation. The analysis under Rule 19 is directed toward the practical and not the theoretical. Morgan Guaranty Trust Co. of New York v. Martin, 466 F.2d 593, 598 (7th Cir. 1972). The bank has not sustained its burden of showing that Hoskins is an indispensable party. Beall, 677 F.Supp. at 283. Because none of the circumstances of Rule 19(a)(1)-(2) apply, Hoskins is not an indispensable party to this cause of action.

Since the court has found that the debtor has standing to bring the cause of action, the debtor has stated a claim upon which relief may be granted, and Hoskins is not an indispensable party, the defendant's motion to dismiss is denied. Defendant is ordered to answer or otherwise respond to the complaint within 20 days of the date this opinion is entered.

See written order entered even date.

/s/ Kenneth J. Meyers
U.S. BANKRUPTCY JUDGE

ENTERED: January 6, 1992